



Arent Fox LLP / Attorneys at Law
Boston / Los Angeles / New York / San Francisco / Washington, DC

February 3, 2022

VIA ECF

The Honorable Lorna G. Schofield, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

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Re: *Ilana Gamza v. Planned Parenthood Federation of America, Inc., et al.*
Case No. 1:21-cv-05553-LGS
Unopposed Letter Motion for Rule 35 Examination of Plaintiff

Dear Judge Schofield:

This Firm represents Defendants Planned Parenthood Federation of America, Inc. (“PPFA”), Rachel Moreno (“Moreno”) and George Walker (“Walker”) (collectively, “Defendants”) in the above-referenced matter. We write pursuant to Federal Rule of Civil Procedure 35 to seek leave for a licensed psychiatrist to conduct a psychological examination of Plaintiff, Ilana Gamza-Machado de Souza, via videoconference. The undersigned conferred with Plaintiff’s counsel, Mr. Daniel Altaras, who stated that Plaintiff does not oppose this Motion.

Rule 35 permits an examination of a party “whose mental or physical condition . . . is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner.” Rule 35(a)(1). Such an examination must be made following a motion from the party seeking to conduct the examination (here, Defendants) that demonstrates “good cause.” Rule 35(a)(2)(A). The motion must “specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.” Rule 35(a)(2)(B).

Courts routinely grant applications for Rule 35 examinations where a plaintiff makes similar claims of severe emotional harm and resulting damages. *See, e.g., Guzman v. News Corp.*, No. 09 Civ. 9323, 2012 WL 2148166, at *2 (S.D.N.Y. June 13, 2012) (granting leave to take mental examination in discrimination lawsuit where plaintiff put her emotional state into dispute); *Kelly v. Times/review Newspapers Corp.*, No. 14 Civ. 2995, 2016 WL 2901744, at *4 (E.D.N.Y. May 18, 2016) (same); *Knoll v. Merrill Corp.*, No. 02 Civ. 566, 2004 WL 1417949, at *1-2 (S.D.N.Y. June 23, 2004) (granting psychological examination where plaintiff claimed severe emotional distress); *Stoner v. New York City Ballet Co.*, No. 99 Civ. 0196, 2002 WL 31875404, at *5 (S.D.N.Y. Dec. 24, 2002) (same).

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Good cause exists for a Rule 35 examination. This is an employment discrimination and retaliation lawsuit that asserts damages based upon various forms of psychological harm. The Amended Complaint alleges, *inter alia*, that Plaintiff “felt extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed” by Defendants’ purported conduct, and that she “suffered and continues to suffer severe emotional distress and physical ailments including extreme anxiety and severe depression . . . [and] became so physically and emotionally distressed that she is having difficulty eating and sleeping.” (Dkt. 33 at ¶¶ 51-53). The Amended Complaint also seeks punitive damages tied to Plaintiff’s alleged injuries. (*Id.* at ¶ 56). Therefore, Plaintiff has clearly put her “mental or physical condition” in “controversy” within the meaning of the Rule.

Defendants seek the Court’s permission to have a psychological examination of Plaintiff conducted by Dr. Larry S. Kirstein, MD. Dr. Kirstein is a licensed and board-certified psychiatrist practicing in New York. The examination would occur virtually (i.e., over Zoom) and we anticipate that it will take no more than two hours. The examination would take place at a mutually convenient time and date, and would not result in the need to extend any dates relative to fact discovery on the operative Case Management Order. The scope of the examination would relate to Plaintiff’s psychological and psychiatric conditions as alleged in the Amended Complaint.

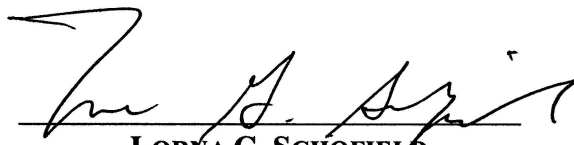
Accordingly, we ask the Court to grant Defendants’ unopposed request to conduct a Rule 35 examination as described herein. Should the Court have any questions regarding this application, the undersigned is available at Your Honor’s convenience.

Respectfully,

/s/ Nancy Puleo
Nancy Puleo

/s/ Brian Farkas
Brian Farkas

Cc (via ECF): All counsel of record.


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Application GRANTED. Defendants may
conduct a mental examination of Plaintiff in
accordance with Fed. R. Civ. P. 35.

Dated: February 4, 2022
New York, New York